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U.S. SMALL BUSINESS ADMINISTRATION,
as Receiver for PROSPERO VENTURES, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

U.S. SMALL BUSINESS
ADMINISTRATION, as Receiver for
PROSPERO VENTURES, L.P.,

Plaintiff,

5

HIGH GROWTH MANAGEMENT, LTD.,

Defendant.

NO. C 07-03735 MEJ
Related Cases
No. C 07-03732 MEJ
No. C 07-03733 MEJ
No. C 07-03736 MEJ
No. C 07-03737 MEJ
No. C 07-03738 MEJ
No. C 07-03739 MEJ
No. C 07-03740 MEJ
No. C 07-03741 MEJ

**DECLARATION OF BRIAN STERN
IN SUPPORT OF APPLICATION
FOR DEFAULT [Filed concurrently
with Application for Judgment,
Memorandum of Points and
Authorities, Declaration of Christine J.
Levin, and Proposed Judgment]**

Date: January 17, 2008
Time: 10:00 a.m.
Courtroom B, 15th Floor

I, BRIAN STERN, do hereby declare and state as follows:

1 1. I am over the age of eighteen years and am the Principal Agent for the U.S. Small
2 Business Administration (“SBA”) as the Court-appointed Receiver (“Receiver”) for Prospero
3 Ventures, L.P. (“PROSPERO”). The SBA has been appointed as the Receiver for PROSPERO and
4 has the powers, authorities, and privileges previously possessed by the General Partner, officers,
5 directors, managers, and agents of Prospero. In my position as the Principal Agent, my duties
6 include assisting the Receiver in the administration and orderly liquidation of the assets and
7 properties of PROSPERO and in the preservation and pursuit of its claims. I am responsible for the
8 maintenance and safekeeping of the official books and records of PROSPERO, including its records
9 concerning the accounts of its limited partners (“LPs”). I am an independent contractor retained by
10 the Receiver and compensated on an hourly rate.

11 2. I have personal knowledge of the facts contained herein and if called upon as a
12 witness, I could testify competently thereto.

13 3. This declaration is filed in support of Plaintiff's Application For Default.

14 4. For this Court's convenience, this Declaration is divided into five (5) sections.

CAPACITY OF PARTIES

16 5. The SBA is an agency of the U.S. Government with its principal office located at 409
17 Third Street, S.W., Washington, DC 20416. By order entered October 20, 2004 (the “Receivership
18 Order”) this Court appointed the SBA as Receiver for PROSPERO. A true and correct copy of the
19 Receivership Order is attached hereto as Exhibit “A.”

20 6. On April 13, 2007, this Court entered its Order (“Lift Stay Order”) partially lifting
21 the blanket judicial injunction and stay against the commencement of civil legal proceedings of any
22 nature involving PROSPERO, or any assets of PROSPERO, or any of PROSPERO’s general or
23 limited partners (“LP”), imposed by Paragraph 7 of the Receivership Order, for the sole purpose of
24 authorizing the Receiver to commence and prosecute separate litigation in this Court against those
25 LPs, including HIGH GROWTH, who had not paid its unfunded capital commitment to
26 PROSPERO, and to take all steps necessary to collect on the obligation of each LP to pay its
27 unfunded capital commitments to PROSPERO, and to take all steps necessary to collect on the
28 obligation of each LP to pay its unfunded capital commitment. A true and correct copy of the Lift

Stay Order is attached hereto as Exhibit "B."

7. PROSPERO is a California Limited Partnership. It maintained its last principal office and place of business at 870 Market Street, Suite 1040 San Francisco, California 94102. The underlying lawsuit is brought solely on behalf of PROSPERO.

**SERVICE OF COMPLAINT ON JERARLD P. SHAEVITZ
(HIGH GROWTH'S AGENT FOR SERVICE OF PROCESS)**

8. Defendant HIGH GROWTH MANAGEMENT, LTD, (hereinafter "HIGH GROWTH") was a limited partner that failed to make its required capital contributions.

9. HIGH GROWTH is a foreign corporation with its principal place of business located in Hong Kong. HIGH GROWTH is not a permanent resident of the United States.

10. HIGH GROWTH irrevocably appointed Jerald P. Shaevitz as its agent for service of process in the enforcement of the defendant's capital contribution. A true and correct copy of the contract irrevocably appointing Jerald P. Shaevitz is attached hereto as Exhibit "C."

AGREEMENT BETWEEN PROSPERO AND HIGH GROWTH

11. On or about April 1, 1999, PROSPERO and HIGH GROWTH entered into a written partnership agreement. That agreement was subsequently modified on or about September 10, 1999 in a document entitled "Amended & Restated Agreement of Limited Partnership for Dotcom Ventures, L.P. (formerly ASCII Ventures, L.P.) a California Limited Partnership (hereinafter "PARTNERSHIP AGREEMENT." A true and correct copy of which is attached hereto as Exhibit "D."

12. The PARTNERSHIP AGREEMENT was entered by Amy L.K. Lo of HIGH GROWTH. A true and correct copy of the signatory is attached hereto as Exhibit "E."

13. Paragraph 1.6 of the PARTNERSHIP AGREEMENT entitled Capital Commitment states the following: "A Partner's Capital Commitment shall mean the amount that such Partner has agreed to contribute to the capital of the Partnership as set forth opposite such Partner's name on Exhibit A hereto."

14. Pursuant to Exhibit A of the PARTNERSHIP AGREEMENT, HIGH GROWTH
agreed to contribute \$124,752 to the partnership.

15. A review of the books and records maintained by PROSPERO shows that HIGH GROWTH paid only \$62,376 which is only one-half of the requisite contribution.

BREACH OF PARTNERSHIP AGREEMENT

16. On or about November 10, 2004, I notified HIGH GROWTH via certified mail that SBA had been appointed Receiver of PROSPERO and informed HIGH GROWTH that the Receiver had taken over control of the assets and operations of PROSPERO. A true and correct copy of that letter is attached hereto as Exhibit "F."

17. On or about May 9, 2005, I sent formal demand via certified mail that HIGH GROWTH's unfunded capital commitment be paid in full no later than June 17, 2005. A true and correct copy is attached hereto as Exhibit "G."

18. Despite demand, no additional payment of capital was made by HIGH GROWTH.

CALCULATION OF INTEREST

19. Paragraph 5.7(b)(I) of the PARTNERSHIP AGREEMENT provides that a defaulting partner shall pay interest on the amount of its capital contribution then due “ . . . at an interest rate equal to the floating commercial rate of interest publically announced by Bank of America, San Francisco, California, as its prime rate plus four percent (4%) per annum, such interest to accrue from the date the contribution to the Partnership was required to be made . . . until the date the contribution is made . . . ” The prime rate at the Bank of America, San Francisco, California, during the applicable time, was five percent (5%) per annum, thereby totaling nine percent (9%).

20. On a balance of \$62,376, interest accrues at a daily rate of \$15.38.

21. Demand was made that the requisite contribution be made no later than June 17, 2005. There are 881 days between the date that the demand for payment be made and November 15, 2007. With interest accruing daily at a rate of \$15.38 daily for 881 days, as of November 15, 2007, the total interest due is \$13,550.12.

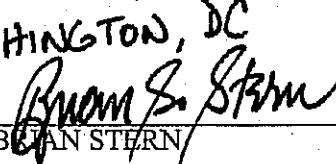
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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on December 7, 2007, at WASHINGTON, DC
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5 BRIAN STERN

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1 **PROOF OF SERVICE**2 I declare that I am a resident of the County of Fresno. I am over the age of eighteen (18)
3 years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno,
California 93704.4 On December ¹², 2007, I served the foregoing document described as **DECLARATION OF**
5 **BRIAN STERN IN SUPPORT OF APPLICATION FOR DEFAULT** on the interested parties,
addressed as follows:6
7
8 [x] BY MAIL - by placing [x] a true and correct copy [] the original thereof enclosed in a sealed
9 envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily
10 familiar" with the firm's practice of collecting and processing correspondence for mailing.
11 It is deposited with United States Postal Service on that same day in the ordinary course of
12 business.
13
14 [] BY CALIFORNIA OVERNIGHT - by placing [] a true and correct copy [] the original
15 thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery
16 to the addressee noted above.
17
18 [] BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and
19 at the address shown above.
20
21 [] BY FACSIMILE TRANSMISSION - by causing a true facsimile thereof to be electronically
22 transmitted to the parties, by using their facsimile number indicated below.

23 Facsimile No.

24
25 [] STATE: I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.
27
28 [x] FEDERAL: I declare that I am employed in the office of a member of the bar of this court
at whose direction service was made.29 Executed on December ¹², 2007, at Fresno, California.30
31 
32 Lisa R. Barr

1 **Via U.S. Mail**

2 Jerald P. Shaevitz
3 24175 Dawnridge Dr.
Los Altos Hills, CA 94024

4 Agent for Defendants,
5 High Growth Management, Ltd.

6 **Via California Overnight:**

7 **Chambers Copies**

8 Hon. Maria-Elena James
9 U.S. District Court, Northern District
10 450 Golden Gate Avenue
16th Floor, #1111
11 San Francisco, CA 94102

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